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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MANUEL CARDENAS AMEZOLA

On Habeas Corpus

G059039

(Super. Ct. No. 01WF0782)

OPINION

Original proceedings; petition for writ of habeas corpus. Petition granted with directions.

David M. McKinney for Petitioner.

Xavier Becerra, Attorney General, and Lynne G. McGinnis, Deputy Attorney General for Respondent.

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THE COURT:^{*}

A jury convicted petitioner Manuel Cardenas Amezola of first degree murder (count 1; Pen. Code, § 187, subd. (a)) and street terrorism (count 2; Pen. Code, § 186.22, subd. (a).) The trial court sentenced petitioner to prison for 25 years to life. We affirmed the judgment on appeal (*People v. Morfin et al.* (July 22, 2004, G030390) [nonpub. opn.]) and refer to our opinion deciding the appeal for a recitation of the underlying facts and a full procedural history.

In the instant habeas corpus proceeding, petitioner seeks relief from his first degree murder conviction. The jury was instructed it could convict petitioner of first degree murder based on the natural and probable consequences doctrine, i.e., as an aider and abettor of a lesser target offense, of which the natural and probable consequence was murder. Under current law, an aider and abettor of a target offense cannot be convicted of first degree murder under the natural and probable consequences doctrine. (*People v. Chiu* (2014) 59 Cal.4th 155, 166-167 (*Chiu*).) *Chiu* instructional error requires reversal or relief via habeas petition unless the reviewing court concludes “beyond a reasonable doubt that the jury actually relied on a legally valid theory in convicting the defendant of first degree murder.” (*In re Martinez* (2017) 3 Cal.5th 1216, 1218.)

In its informal response, the Attorney General concedes *Chiu* error and that the error was not harmless. According to the Attorney General, it cannot be determined beyond a reasonable doubt whether the jury’s verdict was based on a legally valid theory. The Attorney General does not oppose the granting of relief and has therefore waived issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728, 740, fn.7.)

We agree with the parties that *Chiu* error occurred in petitioner’s case and that the error was not harmless. The appropriate remedy is to reverse the first degree

^{*} Before O’Leary, P.J., Moore, J., and Goethals, J.

murder conviction, “allowing the People to accept a reduction of the conviction to second degree murder or to retry the greater offense.” (*Chiu, supra*, 59 Cal.4th at p. 168.)

The petition for writ of habeas corpus is granted. Petitioner’s first degree murder conviction is vacated, and the matter is remanded to the superior court with directions to allow the People to accept a reduction of the conviction to second-degree murder or to retry petitioner for first degree murder based solely on valid theories. Following the People’s election and at the conclusion of further proceedings, the superior court is directed to amend the abstract of judgment accordingly, and to send a certified copy of the amended abstract to the California Department of Corrections and Rehabilitation.